

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

SEP 04 2003

File:

Office: Vermont Service Center

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, [REDACTED] seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as an "evangelist minister" at a weekly salary of \$300.

The director denied the petition on the grounds that the petitioner failed to establish that it was a qualifying tax exempt organization, that the beneficiary had two years of continuous experience in a religious occupation, that the beneficiary is qualified as a minister, and that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief disputing the director's decision along with additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization.

The first issue to be addressed in this proceeding is whether the petitioner has established that it is a qualifying tax exempt organization.

The petitioner in this matter describes itself as a church established in 1998 and incorporated in the State of New York in April 2000. The petitioner has been affiliated with the [REDACTED] (Mount Vernon, New York) since June 1, 2001. The petitioner claimed a congregation of 76 families, but did not describe the number of employees. The petition was filed on May 1, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as an evangelist minister from May 1, 1999 until May 1, 2001. The record indicates that the beneficiary last entered the United States as a B-2 visitor on October 3, 1998. The record reflects that the beneficiary remained beyond his authorized stay and has resided since such time in an unlawful status. The petition, Form I-360, indicates that the beneficiary worked in the United States without permission.

Regulations at 8 C.F.R. § 204.5(m)(3) state, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated July 24, 1989, showing that [REDACTED] was granted tax-exempt status under section 501(c)(3). This letter indicates, however, that the basis for this status is that New Life Fellowship is an organization described in section 170(b)(1)(A)(vi) of the Internal Revenue Code (IRC). This section refers to charities that receive a substantial part of their support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public. This section is not the one relating to religious organizations. Cf. section 170(b)(1)(A)(i) IRC.

There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code. Only organizations classified, or classifiable, as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are qualifying religious organizations for the purpose of special immigrant religious worker classification. Charitable or community organizations classified under section 170(b)(1)(A)(vi) are not qualifying, even if they are organized and operate under the principles of a particular religious faith. Accordingly, the petitioner is not tax-exempt as a religious organization and is ineligible to receive special immigrant classification for any prospective alien employees.

The second issue to be addressed in this proceeding is whether the beneficiary is qualified as a minister as defined in these proceedings.

Regulations at 8 C.F.R. § 204.5(m)(3) state, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested; or

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

Regulations at 8 C.F.R. § 204.5(m)(2) state, in pertinent part, that:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

On appeal, counsel for the petitioner has submitted sufficient evidence to overcome the director's concern and satisfy the regulatory requirement.

The third issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In this case, the petitioner did not provide a detailed description of the beneficiary's means of financial support in the United States. A mere statement indicating that the beneficiary has been receiving \$300 a week plus medical insurance, transportation and proper residence is insufficient to show that the beneficiary was continuously carrying on the occupation of a minister for the two-year period preceding the filing of the petition. The plain meaning of the word "occupation" is an individual's primary endeavor and means of financial support. Absent such a description, supported by contemporaneous documentation such as tax records, the Bureau is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year requisite period. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The last issue to be addressed in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) require that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner in this matter submitted a bank statement and a 2001 financial statement for [REDACTED]. These documents, however, do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the necessary documentary requirement.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.